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December 7, 2009

Honorable Judge Allyne R. Ross
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Via ECF

RE: *Brown v. St. John's University*, CASE NO.: 08-cv-2218 (ARR)(VVP)
Pre-Motion Letter in Opposition to Defendants' Joining Langan's Motion to Dismiss
and St. John's University's Motion to Dismiss Count I

Dear Honorable Judge Ross:

I. Langan's Motion to Dismiss Count II

On November 30, 2009, Plaintiff served its Opposition to Defendant Langan Engineering and Environmental Services, Inc.'s Motion to Dismiss Count II. Subsequently, the following defendants joined with Langan's Motion:

1. Butler Rogers Baskett;
2. HM White Site Architects;
3. GCA Services Group, Inc.;
4. Skanska USA Building, Inc.; and
5. St. John's University.

Plaintiff reasserts the same arguments as stated in its Opposition to Langan's Motion to Dismiss. Specifically, the person vs. corporation distinction with regard to 40(d) remains the same for all joining defendants as it did with Langan. Further, the issue of intent to discriminate is very similar as to each of the joining defendants, as Plaintiff alleged in its Amended Complaint that each of the defendants discriminated against Mr. Brown based on his disability when they failed to construct, design, engineer and/or maintain accessible facilities at the St. John's University Queens campus. *See Amended Complaint* 13-22, 56, 59-61, 69.

II. St. John's Pre-Motion to Dismiss based on Religious Exemption

On November 19, 2009, Plaintiff served its pre-motion letter in Opposition to Defendant St. John's University's Motion to Dismiss Count I based on a religious exemption specified in 42 U.S.C. 12187 of the ADA. Defendants Butler Rogers Baskett, HM White Site Architects, GCA Services Group, Inc., and Langan Engineering and Environmental Services, Inc., joined St.

John's Motion, claiming the religious exemption. However, the exemption is limited to entities which are "...religious organizations or entities controlled by religious organizations, including places of worship." 42 U.S.C.12187. None of the joining Defendants claim that they are religious organizations or are controlled by religious organizations. Further, Defendants cannot cite a single case between them which allows non-religious entities to piggy back onto this very narrow exemption.

Best regards,

Louis I. Mussman

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cc: *All ECF recipients*